National Horsemen's Benevolent and Protective Association, Inc.

Testimony before the Subcommittee on Oversight and Investigations
"Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track Injury Insurance and Other Health and Welfare Issues"

Presented by National HBPA, Inc. President and Chairman John O. Roark
Thursday, November 17, 2005

Thank you for the opportunity to address the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce regarding issues of jockey safety, adequate injury insurance protection for horseracing participants and other current issues facing the horseracing industry. As a part of, or perhaps a result of this Subcommittee's investigations and hearings, it has come to the attention of the National Horsemen's Benevolent and Protective Association, Inc., (NHBPA) that some members of this Subcommittee have called upon the National Labor Relations Board (NLRB) to reconsider the NLRB's policy decision, pursuant to Section 14(c) of the National Labor Relations Act (NLRA), 29 U.S.C. §164(c)(1), to decline asserting jurisdiction over labor disputes involving the horseracing and dog racing industries. See 29 C.F.R. §103.3. The NHBPA wishes to submit this testimony to Congress pertaining to the issues of jockey safety, insurance protection, and the potential for federal governmental involvement in the horseracing industry.

As background, the NHBPA is a service organization founded in 1940 which represents the interests of over 48,000 licensed thoroughbred and quarter horse owners and trainers, their employees and families via 33 affiliated offices across the U.S. and Canada. Among other things, the NHBPA assists its affiliated offices and member horsemen by disseminating and communicating vital information on critical issues;

representing horsemen at industry gatherings and on national boards and committees; organizing bi-annual conventions to promote an exchange of ideas and information and to provide national fire and disaster and owner/trainer liability insurance programs.

NHBPA horsemen and horsewomen run over 324,000 horses over 4,500 cumulative racing days each year and, through their local offices, provide approximately $4 million – taken from a percentage of their purses - in benevolence programs which assist over 5,000 licensees with medical and dental coverage; substance abuse prevention and chaplaincy programs; scholarship, housing and funeral assistance and backstretch recreational programs. The NHBPA also provides a national voice for horsemen on matters of national policy and of national interest and promotes the preservation and enhancement of live racing in North America. Thus, the NHBPA submits the following.

Since 1950 and earlier, the NLRB has declined to assert jurisdiction over labor disputes in the horseracing industry. *In re Los Angeles Turf Club*, 90 NLRB 20 (1950). The rationale was that the operations of the racing industry, "While not unrelated to commerce, are essentially local in character." *Id*. at 20. This same rationale was re-iterated again by the NLRB after Congress enacted Section 14(c)'s specific provisions authorizing the NLRB discretion to decline jurisdiction over certain classes of employers. *See In re Hialeah Race Course, Inc.*, 125 NLRB 388, 391 (1959) ("racetrack operations are essentially local in nature"). The NLRB added another significant point to its rationale in the *Hialeah* case, "[g]iven the character of racetrack operations, which are permitted to operate by special State dispensation, and are subject to detailed regulation by the States, we can assume that the States involved will be quick to assert their authority to effectuate such regulation as is consonant with their basic policy." *Id*.

In 1979, the NLRB re-affirmed its longstanding policy, after formal promulgation of the rule set out in 29 C.F.R. § 103.3 (1973) and after Congress enacted the Interstate Horseracing Act of 1978, 15 U.S.C. § 3001 *et seq*. *See In re American Totalisator, Inc., et al*, 43 NLRB 314 (1979). The NLRB's majority observed: "Congress is well aware of the Board's historic stance of declining to assert jurisdiction over horseracing…, and if Congress had wished to modify this it could easily have done so by using less restrictive language in enacting the "Interstate Horseracing Act of 1978…." *Id*. at 314. The NLRB's minority opinion looked at the legislative history to the Interstate Horseracing Act and concluded Congress itself considered the horseracing industry to have significant impact upon interstate commerce because thousands were employed in the industry and they could/should be subjected to NLRB jurisdiction. *Id*. at 315.

The Interstate Horseracing Act (IHA) contains a succinctly stated and restricted role for the federal government in the horseracing and off-track betting industries. The majority in *American Totalisator* quoted from these congressional findings in the IHA reciting the confined interests of the federal government with respect to horseracing as follows:

(1) The States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) The Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) In the limited area of interstate off-track wagering on horse races, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

243 NLRB at 314, *quoting* 15 U.S.C. § 3001(a)(1)-(3).

The IHA's stated findings and restricted policy role for the federal government in the horseracing industry was founded upon the findings of the Commission on the Review of the National Policy on Gambling, a Commission that rendered its report to Congress in the mid-1970's. *See* S. Rept. No. 95-1117, 95th Cong., 2nd Sess. 6, *reprinted in* 1978 U.S. Code Cong. & Admin. News 4144, 4149. This Commission warned that passage of legislation at the national level concerning horseracing and legalized gambling thereon, unless carefully structured, could amount to "an unwarranted intrusion by the Federal Government into an area of regulation better left to the States." S. Rept. No. 95-554, 95th Cong., 1st Sess. 14 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 4132, 4142 (Views of Mssrs. Cannon & Stevenson), *quoting from the* Commission on the Review of the National Policy on Gambling.

Section 4 of the IHA, 15 U.S.C. § 3003, outlaws all forms of interstate off-track wagering on horseracing without the consent of each of the following: (1) The "host racing association" (which cannot give its consent without having the consent of its horsemen/women via an agreement with their representative "horsemen's group"); (2) The "host racing commission;" and (3) The "off-track racing commission." 15 U.S.C. § 3004(a). Accordingly, the IHA gives a prominent role to the affected States (*i.e.*, two of the three requisite consents) in regulating the horseracing industry. Without State regulatory oversight and consent, there would be absolutely no interstate simulcasting in this country. The IHA gives civil damage remedies for the violation of its provisions, and grants those remedies to, among others, the "host State." 15 U.S.C. § 3005. The IHA, therefore, embodies a significant, indeed, plenary role for the States over the horseracing

industry and preserves their traditional and significant regulatory authority over the industry.

Pursuant to States' plenary authority over horseracing, the NLRB's observation in its decision in *Hialeah Race Course, Inc.,* 125 NLRB 388 (1959), is still accurate today: "[R]acetrack operations…are permitted to operate by special State dispensation, and are subject to detailed regulation by the States." *Id*. at 391. Unquestionably, the horseracing industry has significant impact on interstate commerce. However, the NLRB's policy in 29 C.F.R. § 103.3 is informed by more than just the industry's impact on commerce. The NLRB's policy embodies Congress' national policy toward gambling, to wit: That the primary regulators of horseracing should be the States which in fact control all aspects of the industry including the licensing of all its personnel such as owners, trainers, jockeys, exercise riders, grooms, veterinarians, etc., and which possess a significant revenue interest in the industry's success sufficient to ensure labor stability under state laws.

By virtue of their plenary authority over horseracing, some States have taken dead level aim at resolving labor disputes before they ever erupt into a disruption of commerce. For example, the State of California passed specific legislation concerning the labor relations of backstretch workers. *See* Cal. Bus. & Prof. Code, Div. 8, Ch. 4, Art. 2.5 § 19455 – 19455.4. Under the California Code, specific rights and responsibilities are delineated for workers, employers, and unions. Section 19455(b) provides the basis for enacting these labor relations laws: "The Legislature finds that the National Labor Relations Board has formally declined to assert jurisdiction over horseracing because of extensive state control over the industry, the dominant pattern of sporadic short-term employment which poses problems for effective enforcement of the

National Labor Relations Act, and a unique and special relationship that has developed between the states and the industry." The Code further sets out the State's interest in such laws: "It is the intent of the Legislature to establish an orderly procedure for backstretch employees. . .to organize a labor union, in order to reduce the prospect of any strikes, disruptions, or economic action that would interfere with the operation of horseracing meetings in California." *Id*. at § 19455(c).

State law initiatives such as California's to deal with potential labor disputes before they arise in the horseracing industry are authorized under federal law pursuant to Section 14(c)(2) of the NLRA (29 U.S.C. § 164(c)(2)). These state law initiatives, however, will be completely preempted and rendered nugatory if the NLRB were to reverse its policy in 29 C.F.R. § 103.3. *See San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959) (the so-called "Garmon preemption" doctrine which prohibits states from regulating activities protected by § 7 or prohibited by § 8 of the NLRA, 29 U.S.C. §§ 157 & 158).

The industry itself is working with State regulators to address the concerns of jockeys about insurance protection afforded to injured jockeys and/or exercise riders, etc. The NHBPA is keenly interested in jockeys (as a group and as a constituency) attaining a level of proactive involvement in the industry. Furthermore, jockeys should have and have been accorded the utmost respect of the industry. Jockeys and their immediate families should have no reason to worry about their well-being and should not have to concern themselves each time they ride with an issue of health coverage which might affect their livelihood and their ability to take care of those families. Presently, only California, New York, New Jersey, and Maryland have workers' compensation benefits

for jockeys with varying levels of work benefits. Jockeys are automatically covered in these States and pay no fees as they are considered employees for workers' compensation purposes. All jockeys qualify.

In other states, jockeys are considered independent contractors - not employees - and are covered by an accident and health (A&H) policy offering, in most cases, $500,000 to $1,000,000 worth of on-track accident insurance. Our research also indicates that insurers have approached jockeys' representatives about offering excess coverage, which could easily be made available to individual jockeys for a very reasonable premium at racetracks that purchased the full $1,000,000 limit. To date, current jockeys' representation has not shown a willingness to put in place an excess coverage plan.

Nationally, on-track A&H coverage ranges from $100,000 to $1,000,000 with the vast majority of tracks in the $500,000 - $1,000,000 range. This coverage is first dollar, no deductible applies. All jockeys qualify.

There are pros and cons to either the workers' compensation or on-track A&H approaches. Key factors include cost to tracks and horsemen, compliance, and protection against future increases. The NHBPA, in its 2003 Workers' Compensation White Paper, cites the self-insured or captive approach as being most sensible in the long-run (pp. 18-19), in that industry stakeholders, by investing or having a stake in their coverage program, would be incentivized to control costs and loss and enforce compliance. California implemented a partially self-insured program, known as the California Horsemen's' Safety Alliance (CHSA) in December of 2002 which covers all of its backstretch workers (jockeys and exercise riders included) at relatively generous benefit levels. The CHSA approach came after several years of trying to find a solution to rising

workers' compensation costs and a similar program is also being considered in Louisiana.

By partially self-insuring, industry stakeholders could, in a sense, "inoculate" themselves against future dramatic price hikes as was evidenced in California. Key to any successful program, however, will be strict maintenance of valid workers' compensation certificates of insurance for all racing stables; improved payroll reporting systems; better training and higher licensing standards of licensees and the creation of a national on-track accident database modeled after the national highway patrol system.

It is respectfully submitted, therefore, that the NLRB's longstanding policy under Section 14(c)(1) of the NLRA, 29 U.S.C. § 164(c)(1), embodied in 29 C.F.R. § 103.3, is a correct exercise of discretion with respect to the horseracing industry. If Congress were nonetheless to direct the NLRB to overrule its policy, what continuing authority will States play in the regulation of labor disputes attendant to their plenary regulation of the horseracing industry? Will States such as California have to completely forfeit their carefully balanced statutory provisions that regulate labor relations for backstretch workers, racetracks, unions, and employers (including horse owners and trainers)? Furthermore, what gaps in regulatory authority over the industry might be created by virtue of the NLRA's preemption of States' plenary authority? As this body knows, the NLRA does not extend to employees "employed as an agricultural laborer" (29 U.S.C. § 152(3)), nor to "any individual having the status of an independent contractor" (*id*.).

The legal relationship between racetracks and jockeys is considered by many authorities not to be that of employer/employee, but rather independent contractor. *See*, *e.g.*, *Thompson v. Travelers Indemnity Co.*, 789 S.W.2d 277 (Tex. 1990); *Simmons v. Kansas City Jockey Club*, 334 Mo. 99, 66 S.W.2d 119 (1933); *Haggard v. Industrial*

Comm'n, 71 Ariz. 91, 223 P.2d 915 (1950); *Munday v. Churchill Downs, Inc.*, 600 S.W.2d 487 (Ky. Ct. App. 1980). In a number of jurisdictions, however, jockeys have been found to be employees of the horse owner, *e.g.*, *Biger v. Erwin*, 57 NJ. 95, 270 A.2d 12 (1970); *Drillon v. Industrial Accident Comm'n*, 17 Cal.2d 346, 110 P.2d 64 (1941), although some jurisdictions draw a distinction between "contract jockeys" and "freelance jockeys," *e.g.*, *Munday v. Churchill Downs*, 600 S.W.2d at 487.

If Congress were to direct the NLRB to reverse its policy in 29 C.F.R. § 103.3, then the first question that arises is whose "employees" are the jockeys? If jockeys are permitted to unionize, they will gain exempt status under the antitrust laws and can "strike," but against what "employer" may they strike? Do they strike against racetracks (by most accounts not considered their "employers"), against horse owners or trainers (in some jurisdictions considered their "employers," but not in all circumstances) or against their State's regulatory authorities? A major disruption in the delicate balance that now exists between racetracks, horsemen's groups and State regulatory authorities will be affected by any reversal in the NLRB policy.

Furthermore, the NLRA's broad exemption for "agricultural laborer[s]" is likely to leave a large regulatory gap and fail to benefit many of the individuals whom this Subcommittee may, at first blush, think would be benefited by a reversal of 29 C.F.R. § 103.3. Congress has long defined "agricultural laborer" for purposes of the NLRA the same as the "agriculture" exemption under the Fair Labor Standards Act, 29 U.S.C. § 203(f). *See Holly Farms Corp. v. NLRB,* 517 U.S. 392, 397 (1996) (since 1946). The Department of Labor has issued regulatory guidance on the agricultural exemption for the horseracing industry, at 29 C.F.R. § 780.122: "Employees engaged in the breeding,

raising, and training of horses on farms for racing purposes are considered agricultural employees."

While Congress can clearly direct the NLRB to reconsider its policy toward the horseracing industry, the NLRB will nonetheless be prohibited from exercising jurisdiction over numerous workers in the industry as "agricultural laborers." True, some "employees engaged in the racing, training, and care of horses and other activities performed off the farm in connection with commercial racing" may not qualify as "agricultural" (*see* 29 C.F.R. § 780.122), but thousands of workers such as grooms, hot walkers, or exercise riders who are employed on breeding or training farms will remain out of reach of the NLRB despite performing some of their work at racetracks because they are employed by racehorse "farmers." *Cf. Baldwin v. Iowa Select Farms, L.P.*, 6 F. Supp.2d 831 (N.D. Iowa 1998) (employees in the hog raising business are "agricultural" even though some operations do not occur on a farm); *see Holly Farms Corp. v. NLRB,* 517 U.S. 392 (1996) (discussing two-part test of what is "agricultural" activities, some of which may occur on or off the farm); *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755 (1949) (establishing the two-part test for "agriculture"); *see also* 29 C.F.R. § 780.105(b) & (c) (same); 29 C.F.R. § 780.122 (raising racehorses is "agriculture").

On balance, given the significant legal ramifications that would occur if the NLRB reversed its policy in 29 C.F.R. § 103.3, it would be very disruptive to interstate commerce for the NLRB to start asserting jurisdiction over the horseracing industry. States that have utilized their plenary regulatory authority over the industry (usually through state racing commissions) will have to forfeit significant control in the regulation of the industry in favor of the NLRB, a federal bureaucracy, which will have exclusive

oversight of labor relations issues in horseracing. Regulatory gaps will emerge due to the NLRA exemptions, but such gaps do not currently exist in state regulators' ability to reach and protect workers in the industry.

The status quo need not be tolerated, however, given the significant problems that have surfaced with respect to the Jockeys' Guild's failure to continue carrying adequate insurance for injured jockeys. Indeed, this Subcommittee may have requested the NLRB to reconsider its policy with respect to the horseracing industry, in part, because of frustration with the Jockeys' Guild and its assertions that it is not legally answerable to member- (or non-member-) jockeys pursuant to the statutorily derived "duty of fair representation" that attaches to "labor organizations" authorized pursuant to the NLRA.

The Jockeys' Guild has defended lawsuits brought against it by injured jockeys claiming the Guild inappropriately failed to protect their interests while purporting to exclusively negotiate away their "publicity" rights vis-à-vis racetracks on the technical ground that the Guild is not a labor organization within the meaning of the federal labor laws (in part due to the policy of 29 C.F.R. § 103.3). *See* Brief for Defendant-Appellee Jockeys' Guild, Inc. *in Sidney Underwood v. Atlantic City Racing Ass'n*, 3rd Cir.Ct. App. No. 96-5578, at pp. 14-15, *found at* 1997 WL 33554410 (submitted Sept. 9, 1997). While the Jockeys' Guild's legal position in the *Sidney Underwood* case (and similar cases) is regrettable for the injureds' sake, the answer is not to reverse the NLRB's longstanding policy in 29 C.F.R. § 103.3. The remedy of extending NLRB oversight into the horseracing industry raises far more concerns than it solves.

The day-in and day-out working conditions at racetracks at which jockeys as well as grooms, hot walkers, exercise riders and the like perform their work, are matters better

left to state regulators and the industry as a whole, and which are currently being addressed in a concerted effort.

Moreover, with the advent of video lottery machines and other forms of gaming at racetracks, small-market tracks are able to compete with large-market tracks in areas of purse distribution and stakes events. With that dynamic in place, it is now more meaningful than ever that jockeys be able to participate across state lines and around the nation. It is in the interest of all industry stakeholders to support jockeys in this new paradigm. Insurance coverage should transcend from track-to-track and state-to-state to the benefit of racetracks and horsemen. The NHBPA, therefore, calls for injury protection coverage for all jockeys, exercise riders and backside workers. It is vitally important that the industry support this cause and we ask all the industry stakeholders to join us in pursuit of this reform.

The best manner of achieving this reform is not to nationalize workers' compensation, nor to reverse the NLRB's longstanding policy in 29 C.F.R. § 103.3. Congress has long recognized the primacy of State regulatory authorities over the industry. This State primacy is far preferable to the federal government asserting a direct regulatory oversight role over the industry, or a federal bureaucratic agency's assertion of jurisdiction over it. The IHA's indirect mode of regulating interstate commerce with respect to horseracing is the best methodology of addressing Congress' limited national interests concerning the industry. The IHA preserves States' primacy in the area and encourages stakeholders to cooperate with each other to reach industry-wide agreements to resolve vital issues such as those now facing jockeys, exercise riders, etc.

This body certainly has the authority under the Interstate Commerce Clause to

legislate concerning the horseracing industry, but to do so, would usurp the States' traditional and longstanding plenary role over the industry. It is respectfully submitted that this body should not, therefore, encourage the NLRB or any other federal agency to assume the States' primacy over horseracing, and instead, encourage State regulators to work with racetracks, horsemen/women, jockeys, and backside personnel to find acceptable solutions to the issues about which this Subcommittee is concerned. Encouragement from this Subcommittee will go a long way toward catalyzing the industry and their State regulators to promptly reach a resolution to the vital issue of adequate injury protection insurance for jockeys, exercise riders, etc.

Safety & Health of Jockeys, Exercise Riders, and Backstretch Workers

The Subcommittee has also called upon the Secretary of Health and Human Services, and in particular the Occupational Safety and Health Administration (OSHA) to look into doing a comprehensive inventory of safety hazards in the horseracing industry, and for the National Institute of Occupational Safety and Health (NIOSH) to provide a set of recommended standards under which racetracks should operate. The NHBPA agrees that a comprehensive study into what steps can be taken to minimize safety hazards in the horseracing industry is advisable. The NHBPA would encourage all its affiliates to work with any such investigation and inventory, and welcome the opportunity to give input into the development of recommended standards of safety.

Pursuant to the authority of the Secretary under Section 21(d) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 670(d), the Secretary is to establish and support "cooperative agreements with the States under which employers subject to [the Act] may consult with State personnel with respect to—(A) The application of

occupational safety and health requirements under [the Act]…; and (B) Voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment." *Id*. The Secretary may furthermore "condition [] receiving funds under such [cooperative] agreements, for contributions by States towards meeting the costs of such agreements." *Id*.

This Subcommittee can and should encourage the Secretary to enter into "cooperative agreements" with state regulators of the horseracing industry with respect to occupational safety and health issues, as referred to in Section 21(d) of the Act, 29 U.S.C. § 270(d). Funding for "voluntary efforts" as referred to in the Act could be provided for by the Secretary and the Secretary could condition receipt of funds upon contributions by the States in meeting the costs of such agreements. The Interstate Horseracing Act (IHA), 15 U.S.C. § 3001 *et seq*., would provide a ready mechanism to encourage States and industry stakeholders to reach appropriate "voluntary efforts" to resolve the issues of safety and health hazards within the industry as well as induce stakeholders to address the adequacy of injury insurance against unavoidable risks inherent in the sport of horseracing for jockeys, exercise riders, etc.

Specific areas of safety and/or potential hazards in the sport may be of concern to this Subcommittee. Limitations in the structure of the horseracing industry make safety issues a challenge to address. For instance, OSHA is directed toward "employers" and requires them to provide a safe work environment. Of course, racetracks do not generally "employ" jockeys or exercise riders, etc. Small businesspersons, *i.e.*, the owners and trainers of the athletes in the sport (the horses), are frequently considered either the

employer or contractor of workers on the backside of the racetrack. Owners and trainers do not control the safety hazards of a racetrack or its backside.

Pursuant to the IHA, owners and trainers by and through their "horsemen's groups" have the authority to negotiate with racetracks on a periodic basis to reach agreements addressing a number of issues between them, including racetrack safety and backside safety conditions. Many of the NHBPA affiliates around the country routinely contract with their racetracks about such conditions along with a host of other "terms and conditions" that go into the "regular contractual process" between tracks and horsemen/women, and which agreements ultimately contain the grant of horsemen's statutorily required consent to interstate off-track wagering. *See* 15 U.S.C. § 3002(21), (22) & § 3004(a)(1). These racetrack-horsemen's group's agreements are customary in the industry, required by the IHA, and ultimately overseen and approved by State racing commissions whose consent to interstate off-track wagering is statutorily required as well. *See* 15 U.S.C. § 3004(b) & (c).

A ready mechanism already exists for encouraging industry stakeholders to comply with occupational safety and health standards that may be appropriately developed by NIOSH. The NHBPA applauds this Subcommittee's efforts to encourage the Secretary of Health and Human Services and NIOSH to develop such standards, and suggests that such might be accomplished pursuant to the Secretary's authority under Section 21(d) of the Act, 29 U.S.C. § 670(d)'s authorization of "cooperative agreements" between the States and industry stakeholders.

As to specific issues of occupational safety and health, an appropriate investigation and analysis of the industry needs to be conducted by NIOSH. Many

unsupported safety concern allegations abound and unfounded safety "fixes" have been circulated in the industry. A thorough and scientifically based investigation and analysis of safety concerns and hazards, looking toward the development of sound occupational safety and health standards, is indeed warranted. While other industries akin to horseracing involving similar "track" type hazards (such as drag racing or stock car racing) have not apparently been extensively regulated heretofore by OSHA, the dearth of safety and health oversight in these industries does not mean that the investigation and recommendation of safety standards in this industry is unwelcome.

As a starting point with regard to some of the specific safety concerns alleged to exist in the horseracing industry, the NHBPA offers the following:

Weights and Body Fat of Riders

The issue of maintaining minimum weight levels is primarily centered on the professional jockeys. Exercise riders are not required to maintain a minimum weight, although those who "work" horses (full speed maintenance exercise) are generally expected to weigh a more lenient 125 – 135 lbs.

During the past two years, the Jockeys' Guild has presented a proposal to raise the minimum weight – in some cases up to 126 lbs. from the existing generally accepted average minimum of 112 lbs. - and to put tighter restrictions on minimum body fat standards for riders. Using body fat measurements could also be misleading in that an otherwise healthy jockey could have virtually the same body fat index as an unhealthy jockey. Most horsemen will agree that, due to better living conditions and nutrition, today's jockeys are generally bigger than 20 or 30 years ago. It is, of course, in the

horsemen's best interests that the jockeys they hire are in the best possible physical condition.

However, there are equally as many licensed, competent and skillful jockeys who DO NOT have to engage in extreme weight loss techniques and have been able to apply the necessary dietary and nutritional practices they need to perform. Being a professional jockey, like being a professional racecar driver, is a specialized profession limited to certain individuals who possess the necessary physical and mental skills and who readily assume the related risks.

The California horse racing industry (owners, breeders, horsemen and track operators), led by Del Mar Thoroughbred Club Vice President Craig Fravel, proposed a well researched alternative to the Jockeys' Guild plan which was approved by the California Horse Racing Board (1) In general, the California plan would mandate a minimum weight of 118 (a more reasonable 6 – 8 lbs. above the current minimum) as compared to the 126 lb. minimum proposed by the Jockeys' Guild. In our view, a 126 lb. minimum would negatively impact the health and safety of horses at full (race) speed.

Furthermore, Mr. Fravel has taken the lead, along with other industry stakeholders including the NHBPA, in considering a proposal for research titled "Athletic Performance in Jockeys: A Baseline Study of Physiological and Nutritional Factors". If funded, this study would be led by noted researcher, Dan Benardot, PhD, who heads the Laboratory for Elite Athlete Performance at Georgia State University.

In order to make more informed long-term decisions with regard to jockey weights, the NHBPA would encourage a.) That our affiliate leadership endorse the

compromise minimum weight proposal adopted by the California racing industry and; b.) To support Dr. Benardot's comprehensive research proposal cited earlier.

(1) Blood-Horse Magazine; CHRB Rejects Increase in Jockey Weights by Jack Shinar; April 28, 2005

Track Conditions

The maintenance of a horse racing surface is very specialized and can vary greatly from state to state and region to region. While there may be instances where heavy rains, temperature changes and other situations have impacted the safety of a racing surface, we feel the best way of effectively dealing with track safety is through regular communication.

We endorse the common (and successful) practice used by the vast majority of racetrack operators (typically through their Director of Racing and Track Superintendent) and representatives of the local horsemen and jockeys, which is to a.) Keep in constant communication with the track superintendent regarding track conditions on a day-to-day basis and; b.) In the event of severe weather, to meet prior to the start of a racing card and physically inspect the surface and make a unified decision of whether to race or not.

The racing industry, during the past 20 years, has invested heavily in proven safety measures, most notably the Fontana Safety Rail system which is now in place throughout the large majority of tracks and many major training centers. This rail system forms a trampoline surface, which directs a falling rider away from dangerous rail posts toward the infield. Likewise, the multi-million dollar research and development into new and improved racing surfaces is on-going and can best be evidenced with the launch of Polytrack, a revolutionary new synthetic surface which blends fibers and recycled rubber

and wax covered silica on top of a vertical drainage system and which recently replaced Northern Kentucky's Turfway Park Racetrack's conventional one-mile dirt track and received rave reviews (2), (3).

Keeneland Race Course, which co-owns Turfway Park began using Polytrack on its five-eighths-mile training track in September 2004 as a test. Keeneland has partnered with Martin Collins International as the North American distributor of the product.

Safety Equipment

Jockey and exercise riders' helmets and safety vests are required to be SEI (Safety Equipment Institute) certified and to meet specific ASTM (American Society for Testing and Materials) standards (F-1163 in the

(2) Blood-Horse Magazine; Early Returns: Polytrack Experience Pays Off by Tom LaMarra; September 7, 2005
(3) Blood-Horse Magazine; Turfway Park First to Install Polytrack on Main Track by Amy Whitfield; April 27, 2005

case of safety equipment).

The development of safety gear for jockeys and exercise riders, which has only been mandatory since in the early 1950's, mirrors similar safety advances in professional football – which did not require solid helmets in the early years of the sport. Thanks to government urging in the early years, both sports have taken it upon themselves to aid in the development (through proper testing and research) and then require the use of ever-improving safety equipment for its athletes. Despite the relative danger of both sports, industry efforts at improving safety gear have clearly resulted in countless lives being saved.

In recent years, a company by the name of Sure Lines, Inc. has been promoting the mandatory use of a new type of safety rein. The safety reins are reinforced by a wire

and designed to hook on to the horse's bridle and have a breaking point of 360 pounds over nine minutes (vs. 300 for regular leather or nylon reins).

Ultimately, the added cost of new safety reins would be borne by horsemen. It has been estimated that Sure Lines reins would cost an additional $15 - $20 more than standard reins.

Standard leather reins are normally $70 and nylon approximately $20. Refitting an entire racing stable of 30 horses would cost horsemen an additional $1,200 to $2,700 – a substantial financial burden for the small to midsize market racing operation without clear evidence that doing so would have the hoped for safety improvement.

No current regulations or model rules have been enacted by industry regulators such as the Association of Racing Commissioners International (ARCI) and the North American Pari-Mutuel Regulators Association (NAPRA). NHBPA agrees with regulators that rein failure (or failure of other critical equipment such as saddles, stirrups, stirrup leathers and girths) should be properly researched and, if indicated by independent data, be upgraded first on racing bridles (used during the actual running of races) and then phased in over time on training equipment.

Certainly, riders would be well within their rights to provide their own reins to the trainer if they so desired. However, in the end, clear research is needed. For example, what is the ratio of broken reins to the 350,000 horses that NHBPA horsemen run each year? What are the failure rates between leather reins and the often used nylon reins? Is the critical need more for racing conditions versus morning exercising (which would require trainers to purchase fewer sets of reins)? This also begs the question: Is the Federal Government going to also regulate the equipment being used by nearly 2 million

horse owners across the U.S. who own and ride the 3.9 million horses used in recreational activities across the U.S.?

Conditions of the Horses

The NHBPA supports the industry-wide efforts currently underway at enhancing current state-by-state medication regulations into uniform national medication policies being undertaken by the Racing Medication and Testing Consortium (RMTC) whose mission is to develop, promote and coordinate, at the national level, policies, research, and educational programs which seek to ensure the fairness and integrity of racing and the health and welfare of racehorses and participants, and protect the interests of the betting public.

The RMTC currently includes representatives of all major horseracing and breeding organizations – including the NHBPA - from the Thoroughbred, Quarter Horse and Standardbred industries including: Track operators, regulatory bodies, horsemen's associations, breeders' associations, breed registries, jockeys and other key stakeholders.

The NHBPA membership agrees that more effective regulation must start by "leveling the playing field" and arriving at agreeable national uniform standards that do not penalize responsible use of therapeutic medication. Testing lab accreditation, specific regulatory levels and withdrawal time guidelines are just a few of the critical areas currently being developed through the RMTC, which has recently circulated a set of proposed model rules to state racing regulators (many have already adopted the rules into their racing statutes).

Track Work Rules

As previously addressed (pp. 9-12) the NHBPA firmly believes that working together with state regulators, the racing industry is clearly best suited to developing "best practices" needed to make racetrack facilities as safe as possible for fans and participants.

For example, the issue of limiting field sizes is regularly addressed and most racing departments limit field size in turf races due to the tighter turns involved. Churchill Downs implemented a limit to 20 horses in the Kentucky Derby due to safety concerns after 23 runners participated in the 1974 Kentucky Derby. Does OSHA limit the size of the field of racecars in the Indianapolis 500?

The mandatory use of multiple cameras (front stretch head-on; backstretch head-on and pan angles) at every licensed racetrack is further evidence that racing is the most regulated sport in the U.S. Every step of every race is caught on video and available to a board of stewards one of whom is, typically, a retired jockey.

Adding additional $30,000 video cameras will not solve the problem of reckless riding. Better education, training and stiffer licensing standards will. The NHBPA was a founding member of the Groom Elite Program (GEP) whose mission is to provide horsemen an opportunity for professional and personal growth, by increasing their understanding of the horse with which they work and enhancing their professional skills (www.thehorsemeneliteprogram.com). GEP goes from state to state and track to track providing continuing equine education for backstretch licensees while also providing training in barn safety, first aid and life skills (i.e. substance abuse prevention) in cooperation with industry support groups such as the Winners' Foundation and the Race Track Chaplaincy of America.

The NHBPA is also an active participant and Board member of the North American Racing Academy (NARA) (www.naracingacademy.com) – a national racing school for jockeys being developed by industry leaders and led by retired Hall of Fame jockey Chris McCarron. NARA's mission – "to develop and operate a world-class racing school which will provide students with the education, training and experience needed to become expert horsemen skilled in the art of riding racehorses and knowledgeable in the workings of the racing industry as a whole" – fits well within our view that better safety begins with better training and higher standards. NARA would be in the business of preparing better jockeys and horsemen. Working within the Kentucky Community and Technical College System, NARA sees its role as providing the racing industry with a national accredited vocational program designed to provide students with coursework in various racing industry fields such as: Regulation and officiating, track management, and life skills (i.e. substance abuse prevention, nutrition and exercise, etc…) in addition to race riding.

While some might believe that mandatory drug and alcohol testing programs might be the answer, we believe that education is the key.

The NHBPA would work with the ARCI and NAPRA in developing uniform national model rules which would mandate higher licensing requirements – including training in barn safety, first aid and substance abuse prevention - for all critical licensees such as jockeys, exercise riders and grooms. This approach would have the most immediate effect on track safety and help to reduce accident / workers' compensation insurance costs.

On-Track Injury Insurance / Workers' Compensation

As indicated in our May 19, 2005 written response to Rep. Whitfield's request for information (see attached) and as cited previously (pp. 5-6), the NHBPA has spent a great deal of time researching the issue of on-track injury / workers' compensation insurance, forming an industry task force in 2002 – 2003 designed to study possible solutions. We encourage the committee to review NHBPA's attached December, 2003 Report entitled "Workers' Compensation Mechanisms for Jockeys" and our Workers' Compensation White Paper and Task Force Report which are available on NHBPA's web site: www.nationalhbpa.com.

The NHBPA Workers' Compensation Task Force outlined the findings of the three task force groups that were formed to investigate solutions to the crisis in workers' compensation. The common goal was to ensure the long-run stability and affordability of insurance in the racing industry. These groups believe insurance rates can be reduced by (1) Increasing the use of effective plans to cover athletic participants, namely jockeys and exercise riders; (2) Forming self-insured or partially self-insured "captive" plans to make the industry more attractive to insurers; (3) Developing a national database for reporting on-track accidents and injuries; (4) Enforcing better compliance and reporting practices and loss controls among horsemen and;

(5) Establishing better education and testing requirements for licensees on the backstretch to promote a safer, more competent workplace.

California was able to implement a well-designed partially self-insured program while Louisiana is looking to follow suit. Other states, such as New York, New Jersey and Maryland have already implemented workers' compensation plans and Kentucky, pending legislative approval, should have a similar plan in place shortly. This

notwithstanding, the large majority of racetracks has $500,000 - $1,000,000 on-track injury coverages in place. The key here is that state racing industries may have differing needs and therefore might have differing, yet effective, approaches to the issue of on-track accident coverage.

We feel that the federal government's most useful role would be in assisting and encouraging states in getting the local enabling legislation needed in order to "lay the groundwork" on which they can build an affordable program that is fair to all racing industry stakeholders.